to enter into some business arrangement which would permit them to seek a single license for that frequency in that EA. If only one incumbent is authorized in the market, that licensee could request the EA authorization. In either case, there would be only a single applicant for the authorization, thereby eliminating any possibility of mutual exclusivity. The auction process would still be used if the channel was not already encumbered, if a single incumbent did not request an EA license, or if the co-channel incumbents could not come to an agreement for its use.

38. As the Commission is intimately aware, the agency and the industry have expended enormous resources in attempting to balance the various interests of parties in this proceeding. In some instances, difficult decisions were made which will require the cooperation of those who do not support them. Nonetheless, it is time for the industry to move forward so that it may begin to regain the competitive ground it lost while these battles were being fought. Adoption of the proposal outlined above will significantly accelerate that process because it provides a tangible, quantifiable incentive for upper 200 channel incumbents to participate proactively and positively in the retuning process. It will be simple and quick for the FCC to administer. Most importantly, however, it has the endorsement of all segments of the SMR industry, and will not diminish the competitive nature of that marketplace given the absence of auctionable white space in any area of economic consequence.

39. Assuming the FCC adopts this proposal, AMTA recommends

that it begin to accept these applications approximately one hundred and eighty (180) days after completion of the upper 200 channel auctions. At that point, all parties will know who has acquired the upper EA licenses. Both the license winners and the remaining incumbents will be in a position to assess their individual levels of interest in lower channel EA authorizations, and to negotiate satisfactory arrangements. It is imperative that this process proceed expeditiously so that lower channel spectrum can be "unfrozen" and the licensees on it not disadvantaged competitively vis-a-vis the upper EA auction winners.

40. AMTA's specific recommendations regarding the lower band licensing framework, whether such licenses are awarded to a single, qualified incumbent or are assigned through a competitive bidding process are detailed below.

1. Service Area

41. For the reasons described above, AMTA supports the FCC's proposal to license the lower band channels on an EA basis. This approach will make these authorizations coterminous with the upper band EA licenses. Additionally, there is general agreement that EAs more closely approximate the coverage of traditional SMR systems than geographic areas such as MTAs or MSAs.

2. Channel Assignments

42. Currently, the lower 80 SMR channels are assigned in five-channel groups with a 1 MHz separation between the frequencies

in each group.[6] They are interleaved with frequencies assigned to the Business, Industrial/Land Transportation and Public Safety Services. The 150 contiguous General Category frequencies are assigned individually, but may be consolidated under various rule provisions.[7]

43. The FNPR proposes to continue licensing the lower 80 channels in five-channel blocks, presumably the existing blocks.[8] Notice at ¶ 300. It notes that, by contrast, the General Category channels are sequential and could be assigned in contiguous groups. Expressing concern about the resources required to license each of these frequencies individually, particularly in a competitive bidding proceeding, the Commission instead proposes to group them in blocks of varying sizes and seeks comment on the configuration of such blocks.

44. AMTA agrees that it would be appropriate to preserve the current groupings on the lower 80 channels. As currently con-

---

[6] 47 C.F.R. § 90.617, Table 4A. Over the years, these five-channel blocks have been broken when licensees failed either to construct or to load the frequencies as specified in the rules. Channels recovered in this process have been reassigned to other parties, either for the expansion of existing systems or the creation of new systems. Thus, although the original channel blocks continue to be prevalent, there are variations on these assignments.

[7] 47 C.F.R. § 90.615.

[8] The text of the Order is specific on this point; however, the proposed rules regroup the channels into ten blocks of eight contiguous frequencies. For the reasons described in these Comments, the Association urges that the final rules be reconciled with the text, and that they reflect the current five-channel groupings.

figured, these channel blocks enable traditional SMR operators to provide a cost and spectrum efficient dispatch service to significant number of users. There would be no obvious public interest benefit in revising this scheme to create contiguous spectrum blocks, and, to the best of AMTA's knowledge, no party has requested such a change. Instead, frequencies on which all incumbents reached agreement would be awarded on an EA basis to that entity, with the rest auctioned.

45. The Association also agrees that the already contiguous General Category frequencies present a different opportunity. While AMTA expects a significant amount of this spectrum to continue to be used in traditional SMR systems, and believes that result would be fully consistent with the public interest, the contiguity of these channels may also permit alternative, attractive offerings. These offerings may require the availability of multiple, contiguous channels.

46. Thus, AMTA recommends that the General Category channels be sub-divided for auction purposes into three fifty-channel blocks. Assuming the FCC adopts the incumbent licensing process outlined above, each such block would be reduced in each market by whatever channels had already been assigned under that procedure. The remaining frequencies would be awarded by competitive bidding.

3. Operational and Eligibility Restrictions

47. The Notice questions whether operational or eligibility restrictions should be imposed on the lower channel licenses. Most significantly, the Notice proposes that these frequencies be desig-

nated as an Entrepreneur's Block, with a financial cap on licensing eligibility. Notice at ¶ 305. The rationale for this designation is the Commission's concern that its rules not inadvertently permit successful upper channel EA licensees to acquire significant channel positions in the lower channel blocks as well. Id.

48. The Commission's desire to maintain a competitive balance in the SMR industry, and, in particular, its commitment to promote opportunities for smaller businesses unlikely to be successful in acquiring upper EA licenses is commendable. AMTA too has endeavored throughout this proceeding to ensure a balanced approach for all interested parties. The question is not whether this balance should be maintained, but the best framework for achieving that result.

49. As noted previously, AMTA is engaged in ongoing discussions with other industry participants regarding this issue, and anticipates presenting a more detailed position at the Reply Comment stage. A critical factor in those discussions is the consensus position that all parties, both small and large, will have a genuine opportunity to pursue competitive SMR opportunities if the FCC adopts the lower channel EA license procedure for incumbents outlined above. Assuming that recommendation is adopted, AMTA believes that the industry might also support some further refinement of the appropriate balance between lower channel spectrum designated as an Entrepreneurs' Block and spectrum for which all parties are eligible to apply.

50. There is general agreement that the non-contiguous

configuration of the lower 80 SMR channels makes them particularly attractive for traditional, typically smaller SMR operators, and that they should be included in whatever spectrum is earmarked for an Entrepreneurs' Block. However, it is possible that some portion of the contiguous General Category spectrum might be made available for all applicants, irrespective of size, if the FCC safeguards the competitive balance in this band by adopting the lower channel EA process proposed herein. The Association is actively discussing the appropriate financial cap for an Entrepreneurs' Block, and intends to address that matter in its Reply Comments. Additionally, AMTA concurs with the FCC's assessment that there should be no limit imposed on the amount of this spectrum that could be aggregated by a single entity. The Commission has addressed and resolved issues relating to CMRS spectrum caps in other proceedings, and need not revisit those issues here.[9]

51. Finally, AMTA strongly supports the FCC's recommendation that these channels should be available for any use which is technically consistent with Commission rules. Notice at ¶ 305. SMR licensees must have technical and operational flexibility equal to that available in competitive services. The Commission's recent Notice of Proposed Rule Making regarding flexible service offerings in the Commercial Mobile Radio Services is simply one example of the Commission's ongoing efforts to afford marketplace decisions

---

[9] See, 47 C.F.R. § 20.6.

the primary role in determining how spectrum should be utilized.[10] The policies articulated in that Order should be followed in this proceeding as well.

4. Construction and Coverage Requirements

52. The Commission has proposed to adopt a twelve-month construction and placed in service requirement for all licensees on the lower 80 SMR and General Category frequencies. Notice at ¶ 311. It also has tentatively concluded that EA licensees on these channels should be subject to the same coverage requirements adopted for upper channel EA systems: coverage to one-third of the population with the EA within three years of initial license and to two-thirds within five years. Notice at ¶ 312. Additionally, however, it recommends an alternative "substantial service" showing like that adopted in the broadband PCS 10 MHz blocks and in the 900 MHz service. Id.

53. All SMR licensees already are subject to a twelve-month construction requirement; non-grandfathered SMR licensees are required to provide service to the public within that time period. Licensees covered by the statutory grandfather provision may satisfy the construction deadline by placing non-subscriber units in operation.[11] Therefore, the Association assumes that the FCC's first proposal is intended to apply that construction period to all licensees on these channels whose construction deadlines have not

---

[10] Notice of Proposed Rule Making, WT Docket No. 96-6, FCC 96-17 (rel. Jan. 25, 1996).

[11] 47 C.F.R. §§ 90.167, 90.631(f), 90.633(d).

yet passed, irrespective of their service classification, and to future licensees, presumably all SMR operators. AMTA does not object to that aspect of that proposal. The Association does not agree, however, that all licensees should be required to provide service to subscribers within that period. Initially, there are non-SMR licensees on these frequencies that will reach their construction deadlines after adoption of these rules, but which are not authorized to and do not intend to provide service to the public. They use their systems for internal communications exclusively. Moreover, some SMR licensees may still be eligible for grandfathered status and, thus, exempt from that obligation. AMTA sees no benefit in attempting to revisit these issues at this point. Non-SMR licensees cannot be subject to such a requirement, and the existing grandfathered provisions should govern SMR licensees on these channels.

54. AMTA is still considering the appropriate coverage requirement for lower channel EA licensees. The Association is committed to ensuring that spectrum be placed in service for the benefit of the public on a timely basis. Both the industry and subscribers are disserved when valuable spectrum can be warehoused for extended periods.

55. However, unlike most other services in which the FCC has imposed such a requirement, this spectrum is already intensively utilized throughout many EAs. AMTA is attempting to reconcile its preference for stringent construction and coverage requirements with a desire not to unfairly disadvantage the more rural incum-

bents in an EA. The agreement procedure supported by much of the industry will work best if co-channel incumbents within an EA have relatively equal voices in the settlement process. If the coverage requirements are such that they can be met only by the operator serving the more populated portion of the geographic area, there may be a reduced incentive for incumbents to come to agreement. AMTA expects to detail its position on this point in its Reply Comments.

5. Treatment of Incumbents/Co-Channel Protection

56. The Association concurs with the Commission's tentative conclusion that there should be no mandatory relocation mechanism for SMR operators on the lower channels. Notice at ¶ 315. In AMTA's opinion, the same protection should apply to all incumbents on this spectrum, irrespective of their service category. Although the Association recognizes that unencumbered spectrum may support services or technologies that cannot be accommodated when channels are heavily used, neither the Commission nor any party to this proceeding has yet indicated either a need for such authority nor a practical plan for accomplishing it. SMRs and non-commercial licensees have co-existed on this spectrum for more than two decades. While this situation may be less than ideal in light of evolving telecommunications opportunities, the cure -- displacement of a very large number of non-commercial as well as commercial licensees -- is an even less desirable approach.

57. The FNPR also seeks comments on both using the 22 dBu

interference contour to determine an incumbent's service area, Notice at ¶ 316, and the appropriate co-channel interference protection standard for incumbents. Notice at ¶ 318.

58. In respect to both of these matters, AMTA sees absolutely no reason why the incumbents on the lower channels would not be entitled to protection identical to that for upper EA licensees. They should be free to redeploy frequencies throughout their 22 dBu interference contour, and to co-channel interference protection in accordance with existing rules.[12] There is no basis in the FCC's policies or in the operating environment of these facilities to adopt a lesser standard. The Association would oppose such a decision strenuously.

C. COMPETITIVE BIDDING ISSUES

59. The Notice describes the competitive bidding, or auction, procedures the FCC proposes to apply in the event it receives mutually exclusive applications for the lower channel EA licenses. Notice at ¶¶ 323-403. These rules generally parallel the provisions governing auctions in numerous other services, including those used to award both the upper 200 SMR EA and 900 MHz SMR MTA licenses. For the most part, AMTA agrees that these rules are reasonable. However, there are certain areas in which the Association wishes to provide the Commission with additional comments.

60. First, the FCC has proposed to use simultaneous multiple round auctions for all of the lower channel auctions. Notice at

---

[12] See, 47 C.F.R. § 90.621(b).

¶ 330. Additionally, it has proposed simultaneous stopping rules for the General Category channels, but market-by-market stopping rules for the lower 80 SMR channels. Notice at ¶ 338. This distinction is premised on an assumption that there is less interdependency among the latter than the former.

61. AMTA has considered this matter carefully in light of the Commission's premise and the burden on smaller operators of continuing to monitor an auction in which they are participating even after bidding appears to have ceased on the market of interest. The Association recommends that the FCC use simultaneous stopping rules for both bands because it believes that there is an interdependency among markets given the coverage patterns of existing systems. Many SMR systems operating on these frequencies today provide coverage in more than a single EA. This will depend, of course, on the size of the EA and on the proximity of the existing facility to the EA boundary. A market-by-market stopping rule might prevent an incumbent, or even a new entrant, from acquiring the EA licenses in all markets in which it currently provides or in which it intends to provide service on those frequencies. Thus, although the advantages of such a rule are significant, AMTA recommends adoption of a simultaneous stopping rule for both the lower 80 and the General Category channels.

62. Further, AMTA encourages the Commission to modify its bidding increment rules to eliminate the alternative $0.01 per activity unit alternative, and instead establish a minimum bid increment of five percent (5%) of the high bid in the previous

round exclusively. Notice at ¶ 337. The alternative effectively substitutes the Commission's assessment of the market value of the spectrum for that of the competitive marketplace. This is particularly onerous in the case of heavily encumbered spectrum such as that at issue here, much of which may continue to be used for business-oriented, rather than more ubiquitous personal communications services.

63. While not addressed directly in this proceeding, AMTA also urges the Commission to recognize the extraordinary drain it places on small businesses when it conducts two auction rounds a day. Many of the likely participants in these auctions are very small operators with wafer-thin personnel resources. One of the reasons SMR systems remain so cost-effective is that they are not human resource intensive. They do not have teams of employees or sufficient resources to retain outside parties whose activities can be devoted to the auctions. Twice a day participation requires them to place their bids, review the results, develop a next round strategy, and implement that strategy -- all during normal working hours. From the perspective of these operators, it would be preferable for the FCC to accelerate moving to higher auction stages than to schedule more than a single round a day.

64. Finally, the FNPR seeks comment on provisions for designated entities. Notice at ¶¶ 375-403. As it has in the past, AMTA supports adoption of the proposed bidding credits, reduced upfront payments, and installment payments for small businesses. These provisions will help preserve the historically competitive nature

of the SMR industry, and maintain some balance among the size of participants in it.

65. For this same reason, however, AMTA rejects any suggestion that there is any record of race- or gender-based discrimination in this service. As the Association has detailed in other proceedings,[13] and perhaps by contrast with other communications offerings, the low entry costs and broadly available vendor financing typical of this industry have permitted participation by any interested party. Because there is no evidence of past discrimination in the SMR industry, statistical, documentary, anecdotal or otherwise, AMTA urges the FCC not to devote its increasingly scarce resources to attempting to establish such a case.

IV. CONCLUSION

For the reasons described above, AMTA requests that the FCC proceed expeditiously to adopt final rules in this proceeding consistent with the recommendations herein.

---

[13] See AMTA Comments, Request for Comments in 800 MHz SMR Proceeding (DA 95-1651), and Request for Comments in 900 MHz SMR Proceeding (DA 95-1479).

CERTIFICATE OF SERVICE

I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 15th day of February, 1996, had a copy of the foregoing COMMENTS OF THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC. hand-delivered to the following:

Michelle Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N. W.
Room 5002
Washington, D. C. 20554

Rosalind K. Allen, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N. W.
Room 5002
Washington, D. C. 20554

D'wana Speight, Legal Assistant
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N. W.
Room 5002
Washington, D. C. 20554

David Furth, Acting Chief
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N. W.
Room 7002
Washington, D. C. 20554

Katherine A. Baer